

DEPARTMENT OF STATE REVENUE**LETTER OF FINDINGS NUMBER: 02-0330P****Sales and Use Tax
Calendar Years 1999 and 2000**

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ISSUE(S)**I. Tax Administration – Penalty**

Authority: IC 6-8.1-10-2.1(d); 45 IAC 15-11-2

Taxpayer protests the penalty assessed.

STATEMENT OF FACTS

Taxpayer is an 18-hole golf course, pro-shop, restaurant and bar. At audit, it was determined that the taxpayer failed to collect and remit sales tax for golf cart rentals, included food sales plus sales tax as green fees, and failed to accrue use tax on untaxed taxable purchases. Taxpayer had no use tax accrual system in place. Taxpayer was given credit in the audit for items it erroneously self-assessed use tax.

I. Tax Administration – Penalty**DISCUSSION**

Taxpayer requests a penalty waiver because of a financial downturn in the past three years. Taxpayer further states that its costs have doubled and it is locked into golf rates that go back five years. Taxpayer states it cannot raise rates to help offset its ever-increasing cost.

45 IAC 15-11-2(b) states, "Negligence, on behalf of the taxpayer is defined as the failure to use such reasonable care, caution, or diligence as would be expected of an ordinary reasonable taxpayer. Negligence would result from a taxpayer's carelessness, thoughtlessness, disregard or inattention to duties placed upon the taxpayer by the Indiana code or department regulations. Ignorance of the listed tax laws, rules and/or regulations is treated as negligence. Further, failure to read and follow instructions provided by the department is treated as negligence. Negligence shall be determined on a case by case basis according to the facts and circumstances of each taxpayer."

The taxpayer failed to remit sales tax on approximately fifty percent (50%) of its taxable sales and had no use tax accrual system in place. Audit allowed a credit where the taxpayer erroneously paid tax upon golf carts. Taxpayer has not provided reasonable cause to allow the department to waive the penalty.

FINDING

Taxpayer's protest is denied.